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Job Support Scheme: Implications for Singapore family offices

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After initial successes in the ongoing fight against COVID-19, Singapore has experienced an apparent resurgence in cases of the highly infectious virus. The Government has responded by extending the 'circuit breaker' which was initially expected to end on 4 May 2020. This has placed curbs on social mobility and has caused disruptions to typical patterns of consumer behavior. Many local businesses are under pressure and those operating in the tourism, travel and the recreational sector have been the hardest hit.

The Singapore Government has been decisive and proactive in supporting businesses with the view to smoothing the economic impact. A key part of this support package is the Jobs Support Scheme (**JSS**). This measure is intended to provide short term financial support to local businesses with a view to preserving pre-pandemic levels of employment, and shortening the period before the economy recovers.

Summary of JSS

The JSS is a straightforward wage subsidy. It is a payment of between 25% and 75% of the gross monthly wages paid to each Singapore citizen or permanent resident employee. It is capped to the first $4,600 of gross monthly wages per employee subject to some limited exceptions (1). Sole traders and wages paid to partners of partnership are not covered by the JSS, though separate measures have been implemented to provide income support for those individuals.

The JSS covers the period from October 2019 to December 2019, and from February to July 2020. It is to be paid out over four tranches from April 2020 to October 2020, and the first tranche has already been paid.

The percentage of the subsidy depends on the industry code under which a local business is registered. Generally, only entities registered as carrying on aviation, tourism and the food and beverage related businesses will receive the higher 50% to 75% subsidies. That said, for the months of April and May 2020, all eligible businesses will receive the maximum rate of 75%. The amount to be received is calculated based on the Central Provident Fund (**CPF**) contributions paid to each local employee in October 2019 and November 2019 respectively. Payments under the JSS may be reduced where local employees are retrenched, placed on no-pay leave or have their salary reduced by their employers after the receipt of initial JSS payments (2).

Directors' fees are generally not regarded as wages which qualify for subsidy under the JSS. The Government has however extended the scheme to now include the employment income of shareholder / directors of Singapore companies incorporated before 20 April 2020, who had assessable income of S$100,000 or less in the Year of Assessment 2019.

Implications for family offices

The introduction of the JSS is relevant for Singapore family offices in a number of different ways.

Given the nature of their activities, family offices are likely to receive only the lower baseline subsidy of 25% (3). This is **not** tested by reference to an actual or anticipated drop in revenue, and applies irrespective of whether or not employers find themselves with spare capacity amongst their employees. In this way it is a potentially a very generous initiative. Both multi and single family offices may find themselves in a position of heightened activity during these times as portfolios are rebalanced; investment opportunities are explored; and input on corporate actions such as debt and equity restructuring is required. It is possible that some multi-family offices may find themselves busier as a result of the current global financial turmoil which may have a positive impact on investment advisory fee income.

For many single family offices, the JSS provides a subsidy in circumstances where headcount may never actually have been in jeopardy. Many family offices have been established to manage funds which are approved under the Enhanced-Tier Fund scheme of Section 13X of the Income Tax Act (Cap 134) (**ITA**). This incentive scheme requires the family office to maintain at least three investment professionals. It is typical for single family offices to start with a minimal level of staffing and to scale accordingly. So for these family offices the tax cost of forgoing the Section 13X fund tax incentive may well exceed the cost of maintaining this minimal level of employment.

A similar comment can be made in relation to family offices which have been approved under the Financial-Sector Incentive Funds Management scheme. This requires committing to a program of growth and minimally also requires three investment professionals to be employed. An incentive corporate tax rate of 10% applies to the qualifying investment advisory and management fee income of a company approved under this scheme. Again it is possible that for many asset management and family office companies which are approved under this scheme, the cost of losing the tax incentive could be greater than the cost of maintaining existing levels of staffing even if some investment professionals may not be fully utilised at this time.

The income tax treatment of the grant itself raises three inter-related questions. The first is in relation to transfer pricing. Most single family offices are considered to be related parties of the funds whose assets they manage. They are therefore required to adhere to the arm's length principle in the computation of their investment management and advisory fees. Many of these family offices choose a cost-plus basis of charge which is available given the unique functions, assets and risks which are borne by single family offices. The question then arises whether the payouts under the JSS are to be taken to reduce the salary and wage expenses of these family offices. If so, this typically represents a large portion of the costs upon which the investment management and advisory fees are calculated. Or is it the case that the full amount of employee costs are to be used as the basis of the charge, with the JSS then netted-off against the amount that is to be charged to the funds which are managed by a family office?

A second question is the income tax character of the JSS payouts as they are received by a family office. According to the Inland Revenue Authority of Singapore (**IRAS**), the JSS payouts should be classified and reflected as grants relating to income in the company's financial accounts. Typically, grants will be taxable if they are given to defray the operating costs of a taxpayer; as is clearly the case here (4). Despite this, the IRAS has expressly stated that JSS payouts will be exempt from income tax in the hands of employers (5). It is not clear on what basis a distinction is drawn between the position in relation to subsidies more generally and the JSS payouts in particular.

The flip side of the discussion on the taxability of the JSS payouts is the impact upon the deductibility of salary and other costs. It is a well established principle that costs of a taxpayer may be deducted to the extent they are 'wholly incurred' in the production of taxable income. This is embodied in the general deductibility provision of Section 14 of the ITA which is familiar in its scope and application. Up until this point, most family offices would have been deriving entirely taxable service fee income. The impact of the derivation of exempt income on the deductibility of the operating costs of a family office has not arisen. With the introduction of the JSS this question is now directly posed, and the IRAS has yet to produce any guidance. There are really only two possibilities where payments under the JSS are treated as being exempt income. Either:

1. the JSS payments will be taken to defray that portion of an employer's wage costs directly. In this scenario, an employer is not entitled to a deduction for any wages which have been 'offset' by the JSS payments. This would be on the basis that those wage costs were not actually incurred which is a critical part of Section 14 of the ITA; or

2. the deductible costs of an employee are to be apportioned across both taxable and exempt income. A reasonable apportionment may be on pro-rata basis. If the JSS payment therefore represents only 5% of the income derived by a company, then potentially it could be argued that only 5% of the expenses of a company are not deductible. This may represent either a better or worse outcome than the first option depending upon the position of a particular taxpayer.

Closing remarks

The introduction of the JSS was a significant and highly beneficial part of the Singapore Government's response to the economic threat posed by COVID-19. As of now some uncertainty surrounds the tax position of local taxpayers which includes the growing community of single and multi-family offices. It is our expectation that this uncertainty will be addressed by the IRAS in due course, and well in time for tax filing season next year.

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FOOTNOTES

(1) Gross monthly wages includes employee contributions to the Central Provident Fund, but exclude employer contributions.
(2) https://www.mom.gov.sg/covid-19/advisory-on-salary-and-leave
(3) As noted, the 75% subsidiary applies for the months of April and May 2020.
(4) https://www.iras.gov.sg/irashome/Businesses/Companies/Working-out-Corporate-Income-Taxes/Taxable-and-Non-Taxable-Income/Tax-Treatment-of-Grants/-Payouts-Commonly-Received-by-Companies/
(5) https://www.iras.gov.sg/irashome/Schemes/Businesses/Jobs-Support-Scheme—JSS-/; refer to FAQ 10.

Authors

Stephen Banfield

PARTNER | SINGAPORE

Private client and tax

+65 6922 3709

stephen.banfield@witherskhattarwong.com

Stacy Choong

PARTNER | SINGAPORE

Private client and tax

+65 6922 3718

stacy.choong@witherskhattarwong.com

Samantha Ng

LEGAL ASSOCIATE | SINGAPORE

Private Client

+65 6238 3015

samantha.ng@witherskhattarwong.com